

New Brunswick Human Rights Commission

Guideline on Political Belief or Activity

Last Reviewed January, 2011

Please Note

The New Brunswick Human Rights Commission (hereinafter the "Commission") develops guidelines as part of its mandate to prevent discrimination. These guidelines are intended to help individuals understand their legal rights and responsibilities under the New Brunswick *Human Rights Act* (hereinafter the "Code").

This guideline embodies the Commission's interpretation of the provisions of the *Code* relating to discrimination on the basis of political belief or activity, as set out in sections 3 to 7 of the *Code*.¹ It is subject to decisions by boards of inquiry, tribunals and courts. Read this guideline in conjunction with those decisions and with the specific language of the *Code*. If there is any conflict between these guidelines and the *Code*, the *Code* prevails. This guideline is not a substitute for legal advice. Direct any questions regarding this guideline to the Commission's staff.

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1. Discrimination on the Basis of Political Belief or Activity

The *Code* prohibits discrimination (whether it is intentional or not) based on political belief or activity in areas such as employment, housing, public services (i.e. schools, hospitals, restaurants, malls, and insurance), and membership in labour unions and professional associations.²

Political belief or activity refers to an affiliation or association with a political party.³ This includes:

- Membership to a political party
- Financial contribution to a political party
- Open or active participation in a political party
- Having a close association with a spouse who is politically active
- Running for office, or holding office at the municipal, provincial or federal level
- Working for a political candidate
- Participating in a political protest or movement⁴

The *Code* also protects individuals from discrimination because they lack a particular political belief or activity.

2. Employment

It is a violation of the *Code* for an employer to discriminate against an employee or a potential employee because of their political beliefs or activities.

The *Code* prohibits discrimination in all aspects of full-time, part-time, permanent, casual or probationary employment. It also applies to unpaid or volunteer employment, employment recruiters and agencies, trade unions and occupational associations.⁵

2.1 Hiring

When hiring new employees, it is a violation of the *Code* for an employer to:

- Ask a potential employee about their political beliefs or activities in an application or during a job interview;
- Post a job ad that requires potential applicants to have specific political beliefs;
- Post a job ad that excludes potential applicants on the basis of their political beliefs;
- Ask an applicant's references about the applicant's political beliefs or activities.

2.2 During Employment

Under New Brunswick human rights laws, employers cannot:

- Refuse to promote an employee due to political belief or activity;
- Discipline or demote an employee due to political belief or activity;
- Terminate an employee due to political belief or activity;

- Fail to consider an employee for a new job position because of their political beliefs or activities;⁶
- Refuse to renew an employment contract due to political belief or activity;⁷
- Award employment contracts based on political belief or activity;
- Reduce an employee's hours of work due to political belief or activity;⁸
- Abuse one's authority by forcing employees to support specific political beliefs or engage in political activities.⁹

2.3 Duty to Accommodate

The *Code* requires employers to avoid policies that have a discriminatory effect on employees' political beliefs or activities. An employer has a duty to accommodate employees' political beliefs and activities to the furthest point possible short of undue hardship.

What is undue hardship?

- Undue hardship occurs if accommodating employees' political beliefs or activities would be extremely difficult for an employer.
- Examples of undue hardship in this context could include:
 - A serious disruption to a business;
 - If tolerating an employee's political beliefs or activities would sacrifice the objectives of the business or organization.

To accommodate political belief and activity in the workplace, an employer could:

- Refrain from taking action against or disciplining an employee for holding certain political views;
- Refrain from taking action against or disciplining an employee for engaging in political activity outside of the workplace;
- Tolerate the free expression of political beliefs within the workplace.

2.4 Limits to Accommodation (*Bona Fide Occupational Qualifications*)

Conduct may be found to be non-discriminatory if the organization can show that the limitation, specification or preference because of political belief or activity is based upon a *bona fide* ("in good faith") occupational qualification (BFOQ) as determined by the Commission.¹⁰

In order to be a BFOQ, the standard adopted by the organization must pass the "Meiorin Test".¹¹ This three part test requires that the standard be:

1. Adopted for a purpose or goal that is rationally connected to the function being performed;
2. Adopted in good faith and in the belief that it was necessary to fulfill that purpose or goal;

3. In fact, reasonably necessary to accomplish that purpose or goal, in the sense that the employer, owner or service provider cannot accommodate affected individuals without incurring undue hardship.¹²

Example:

The Government of British Columbia appointed a Citizen's Assembly on Electoral Reform to discuss different ways of electing Members of the Legislative Assembly. The government wanted to make sure that the members of the Citizen's Assembly were politically impartial (meaning neutral, non-partisan, and unbiased). A woman applied for and received the position of Communications Director for the Citizens' Assembly. The Chair of the Assembly later learned that the woman they had hired had been a member and Director of the Green Party for a period of time. The Green Party openly supported proportional representation as a means of electing political representatives. The Citizen's Assembly withdrew the woman's employment offer because they feared that the public would see her as being biased.

The Tribunal found that the woman was discriminated against because of her political beliefs, however, the discrimination was justified in this case because it was based on a bona fide occupational qualification (the three part Meiorin Test was satisfied).¹³

In addition, the *Code* does not prevent employers from:

- Establishing and enforcing employment qualifications (BFOQ) where the business or organization is itself engaged in political lobbying or advocacy;
- Addressing work disruptions arising from protests or political activity or taking reasonable measures to prevent work disruptions due to protests or political activity;
- Establishing or enforcing conflict of interest policies that determine whether certain employees may be restricted in the expression of their political beliefs or the exercise of their political activity.¹⁴

Please see the New Brunswick Human Rights Commission Guideline entitled *Guideline for BFOQ's and BFQ's and the Duty to Accommodate* for more information.

9. Housing, Services, Goods and Facilities

The *Code* prohibits discrimination against individuals based on their political beliefs or activities in housing, services, goods and facilities.¹⁵ This includes rental units, educational institutions, hospitals and health services, insurance providers, and public places like malls, parks, public transit, stores and restaurants.

This means that an individual's political beliefs and activities must be accommodated to the point of undue hardship. Individuals must not be denied

service or access based on their political beliefs or activities unless there is a *bona fide* ("in good faith") reason for doing so.

Examples of Discrimination:

- Denying an individual access to government services or private sector services because of their political beliefs or activities;
- Harassment of customers/clients because of their political beliefs or activities;
- Refusing to rent to a prospective tenant based on their political beliefs or activities.

10. For More Information

For further information about the *Code* or this policy, please contact the Commission at 1-888-471-2233 toll-free within New Brunswick, or at 506-453-2301. TTD users can reach the Commission at 506-453-2911.

You can also visit the Commission's website at www.gnb.ca/hrc-cdp or email us at hrc.cdp@gnb.ca

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¹ The Commission would like to acknowledge and thank the human rights commissions from various jurisdictions across Canada for the opportunity to study and draw from their policies and documents on political belief and activity.

² *Human Rights Act*, R.S.N.B. 1973, s. 3-7.

³ *Condon v. Prince Edward Island* (2002), 43 C.H.R.R. D/433. [*Condon*].

⁴ *Jamieson v. Victoria Native Friendship Center* (1994), 22 C.H.R.R. D/250 (B.C.C.H.R.). The Council concluded that [absent a definition in the *BC Human Rights Act* (now the *BC Human Rights Code*)] "political beliefs" are not limited to beliefs about or involvement in recognized or registered political parties. In this case, the Council accepted that beliefs about the organization and governance of First Nations communities are political beliefs.

⁵ *Human Rights Act*, R.S.N.B. 1973, s.3.

⁶ *Dowling v. Prince Edward Island*, 2006 PESCAD 1, 57 C.H.R.R. D/429. A man worked for the provincial government for 16 years as a Golf Professional. He took a leave of absence to run in the provincial election as a Liberal Party Candidate. He did not win a seat in the election, and the Conservative Party won the election. Consequently, the man lost his job, and he did not get an opportunity to apply for the newly created position of Golf Shop Supervisor, which had virtually the same duties as his old job. The Panel found that the man's termination from his employment occurred because of government restructuring of the province's golf operations, not because of his political beliefs or activities. The Panel did find,

however, that the man was discriminated against based on his political beliefs and activities when the provincial government failed to consider him for the position of Golf Shop Supervisor.

⁷ *Condon*.

⁸ *Condon*

⁹ *Chrzanowski v. Mah (No.3)*, 2006 BCHRT 526, 58 C.H.R.R. D/198. An employer required his receptionist to work for an afternoon at the local NDP campaign office. When the receptionist indicated to her employer that she did not want to return to the NDP office to do more work, her employer terminated her employment. The BC Human Rights Tribunal found that the receptionist was not discriminated against based on political belief because she failed to show that:

- (i) Working for a political party had an adverse effect on her because of her political beliefs;
- (ii) Or that working for the NDP was contrary to her political beliefs.

¹⁰ *Human Rights Act*, R.S.N.B. 1973, ss. 3(5), 4(4) and 5(2).

¹¹ *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3.

¹² New Brunswick Human Rights Commission Annual Report 2002-2003, pp.13-14.

¹³ *Trevena v. Citizens' Assembly on Electoral Reform*, 2004 BCHRT 24, 49 C.H.R.R. D/47. [*Trevena*].

¹⁴ *Osborne v. Canada*, [1991] 2 S.C.R. 69. The Court ruled that restrictions on the political activities of Public Servants were justified and not discriminatory. See also *Trevena*.

¹⁵ *Human Rights Act*, R.S.N.B. 1973, ss. 4-5.